

Appl. No. 09/700,561
Atty. Docket No. AA315X
Amdt. dated October 3, 2005
Reply to Office Action of May 3, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1, 4, 5 and 7-10 are pending in the application and stand rejected. Claims 1, 4, 5, and 7-10 have been rejected under 35 U.S.C. § 102.

Claim 1 has been amended. No new matter has been added.

Rejection Under 35 USC §102 Over Van Gompel (EP 0 547 497)

Claims 1, 4, 5, and 7-10 have been rejected under 35 U.S.C. § 102(b) as anticipated by Van Gompel et al. (EP 0 547 497). The Van Gompel et al. patent application does not disclose each and every feature of Amended Claim 1. Therefore, the rejection of Claim 1 under § 102 should be withdrawn.

The Van Gompel et al. document appears to disclose two basic types of structures. For example, in embodiments shown in Fig. 1 and Fig. 3, the article shown and described has stretchable side panels which extend completely into the waist band of the article. No separate and non-overlapping construction of the side panel and waist band is shown or described. In fact, the opposite is the case, as applicants have pointed out in previous replies. Figs. 2 and 5 of the Van Gompel et al. document show an embodiment in which the stretchable side panel is shown having extensibility in only a portion of the panel. However, it is noted that the point of this embodiment is to describe the construction of an integral (as opposed to separately attached) side panel. The accompanying description does indicate that the number of elastic strands can vary, but does not specifically disclose a stretchable side panel and waist band which are formed of separate elements and which are disposed so as not to overlap each other in the manner claimed.

Nevertheless, it is the Examiner's position that the disclosure in Van Gompel et al. (particularly, in Fig. 5 and Fig. 2) does disclose the claimed construction because if no extra elastic strands are provided (such as is shown in the figures) then there would be no stretchable material overlap between the waist band and the side panels. Applicants do not agree with this characterization of the Van Gompel et al. document. However, in an effort to advance prosecution and to obtain timely allowance of the pending claims, Claim

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1 has been amended to more particularly point out advantages of the present invention over the structure shown in Van Gompel et al.

For example, Amended Claim 1 requires both that the ear panel be provided with extensibility extending from one end to the other (i.e. from the leg opening edge to the waist edge) while also being formed from a separate element with respect to the waist band and disposed so as to not overlap the waist band. This combination of a fully stretchable ear panel with an independently attached (and consequently stretchable) waist band is not shown or described in the Van Gompel et al. patent. This combination provides improved fit and anchoring of the product as compared to the structures shown and described in the Van Gompel et al. document.

Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 4, 5, and 7-10 is respectfully requested.

Respectfully submitted,

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